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6 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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DIANA LEVY,

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Plaintiff,

No. C 07-02139 JSW

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v.

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STATE OF CALIFORNIA,

13

Defendant.

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**ORDER DENYING
APPLICATION TO PROCEED IN
FORMA PAUPERIS WITHOUT
PREJUDICE AND DISMISSING
COMPLAINT WITH LEAVE TO
AMEND**

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On April 17, 2007, Plaintiff Diana Levy filed a complaint and an application to proceed *in forma pauperis*. Courts must deny *in forma pauperis* applications under certain circumstances, including when the underlying complaint sought to be filed is frivolous or when it fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2).

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In contravention of Federal Rule of Civil Procedure 8(a), Plaintiff failed to file a pleading setting forth the grounds upon which this Court has jurisdiction, “a short and plain statement of the claim showing that the pleader is entitled to relief, . . . and a demand for judgment for the relief the pleader seeks.” Rather, Plaintiff’s complaint is disjointed to the point of being incoherent and unintelligible. It is thus unclear to the Court the legal theories on which Plaintiff seeks relief, what relief she is, in fact, seeking, or the underlying factual basis for the suit.

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Furthermore, federal courts are under a duty to raise and decide issues of subject matter jurisdiction *sua sponte* at any time it appears subject matter jurisdiction may be lacking. Fed. R.

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1 Civ. P. 12; *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983). If the Court
2 determines that subject matter jurisdiction is lacking, the Court must dismiss the case. *Id.*; Fed.
3 R. Civ. P. 12(h)(3). California superior courts are courts of general, unlimited jurisdiction and
4 can render enforceable judgments in practically any type of case. However, federal courts have
5 limited jurisdiction. Federal courts can only adjudicate cases which the Constitution or
6 Congress authorize them to adjudicate: those cases involving diversity of citizenship (where
7 the parties are from diverse states), or a federal question, or those cases to which the United
8 States
9 is a party. *See, e.g., Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375
10 (1994). Federal courts are presumptively without jurisdiction over civil cases and the burden of
11 establishing the contrary rests upon the party asserting jurisdiction. *Id.* at 377.

12 In addition, this Court lacks jurisdiction to review state court judgments. The *Rooker-*
13 *Feldman* doctrine provides that district courts lack jurisdiction to review the final
14 determinations of a state court in judicial proceedings. *See, e.g., Branson v. Nott*, 62 F.3d 287,
15 291 (9th Cir. 1995); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923); *District of*
16 *Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486-87 (1983). “The purpose of the
17 doctrine is to protect state judgments from collateral federal attack. Because district courts lack
18 power to hear direct appeals from state court decisions, they must decline jurisdiction whenever
19 they are ‘in essence called upon to review the state court decision.’” *Doe & Associates Law*
20 *Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001) (citing *Feldman*, 460 U.S. at 482
21 n.16). Where “the district court must hold that the state court was wrong in order to find in
22 favor of the plaintiff, the issues presented are inextricably intertwined.” *Id.* (citations omitted).
23 In such a case, the district court must not exercise jurisdiction to review the ruling of a state
24 court.

25 To the extent the Court can make sense of the current submission, Plaintiff’s complaint
26 seeks, in effect, a review of some state court action. Dismissal is appropriate where the claims
27 are inextricably intertwined with the state court proceedings regarding state court litigation.

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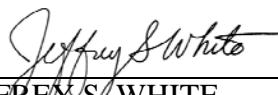
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For the Northern District of California

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2 For these reasons, Plaintiff's application to proceed *in forma pauperis* is HEREBY
3 DENIED WITHOUT PREJUDICE and the Complaint is DISMISSED WITH LEAVE TO
4 AMEND. If Plaintiff wishes to pursue this action, she must file an amended complaint setting
5 forth a cognizable legal claim and some factual basis to support a claim with federal jurisdiction
6 by June 1, 2007. Plaintiff may file a renewed application to proceed *in forma pauperis* upon
7 filing an amended complaint. Failure to file timely an amended complaint shall result in
8 dismissal of this action without prejudice. The Court advises Plaintiff that a Handbook for Pro
9 Se Litigants, which contains helpful information about proceeding without an attorney, is
10 available through the Court's website or in the Clerk's office.

11 In light of this Order, the date for the Case Management Conference, previously set for
12 July 27, 2007 at 1:30 p.m., is HEREBY VACATED and will be reset by the Court at a later
13 date, if necessary.

14 **IT IS SO ORDERED.**

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16 Dated: May 10, 2007

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JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

1
2 DIANA LEVY,
3 Plaintiff,

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6 Case Number: CV07-02139 JSW
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8 **CERTIFICATE OF SERVICE**

9 v.
10 STATE OF CALIFORNIA et al,
11 Defendant.

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
13 District Court, Northern District of California.

14 That on May 10, 2007, I SERVED a true and correct copy(ies) of the attached, by placing
15 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
16 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
17 delivery receptacle located in the Clerk's office.

18 Diana Levy
19 756 Potomac
Santa Rosa, CA 95407

20
21 Dated: May 10, 2007

Jennifer Ottolini
22 Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk